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#### REMARKS

This Amendment responds to the Office Action dated November 13, 2003. Based upon the foregoing amendments and following comments, Applicant respectfully requests reconsideration and allowance of the pending claims.

To satisfy 37 C.F.R. §1.143, the Applicant provisionally elected for examination on the merits, with traverse, claims 1-22. Applicant asserted in response to the July 22, 2003 Office Action that the Examiner had not provided appropriate explanation regarding the separate classification of the original claims. In the present Office Action, the Examiner has attempted to rebut these assertions and Applicant's objections to the restriction requirement. The Examiner has further stated that there are no allowable generic or linking claims. Subsequently, claims 23-32 were withdrawn from consideration as being drawn to a non-elected species. Accordingly, claims 1-22 are under consideration.

By way of this amendment, claims 2, 3, 15, and 17 are canceled. The subject matter of claims 2 and 3 is incorporated into independent claim 1. The subject matter of claim 15 and 17 is incorporated into independent claim 14. Further, claims 4 and 5 are amended to properly depend from claim 1 and claims 16 and 18 are amended to properly depend from claim 14. Finally, independent claim 19 is amended to better define Applicant's invention. Thus, claims 1, 4-14, 16, and 18-22 are presently pending and at issue in this application. No new matter has been added.

The cancellation of claims 2, 3, 15, and 17 should in no way be construed as an acquiescence to any of the rejections stated in the Office Action. These claims are cancelled solely to expedite the prosecution of the present application. Additionally, Applicant does not intend to abandon the scope of the non-elected claims as originally filed or as withdrawn by the Examiner in the present Office Action, but may pursue the remaining claims, either by petition for further review or in a divisional application.

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**I. 35 U.S.C. §112 REJECTION**

Claim 5 stands rejected under 35 U.S.C. §112 as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the pending Office Action alleges that there is insufficient antecedent basis for the limitation "said cavity" in line 2 of the claim 5. Claim 1, from which claim 5 depends, is amended to provide proper antecedent basis for the limitation "said cavity" within claim 5. Applicant respectfully submits, therefore, that claim 5 is now in proper form and requests reconsideration and withdrawal of the rejection.

**II. 35 U.S.C. §102(b) REJECTIONS**

Claims 1 and 2 stand rejected under 35 U.S.C. §102(b) as anticipated by Hubertson (U.S. Patent No. 4,286,769.) Applicant respectfully traverses these rejections.

As an initial matter, Applicant is appreciative of the recognition by the Examiner for his indication of the allowability of claims 3, 4, 8, 9, 16, and 17 if rewritten according to the recommendations stated in the Office Action. The Office Actions states "the prior art of record does not disclose or suggest deforming the annular seal into an elliptical seal by placing it into [an] elliptical cavity of a seal structure...." In accordance with the Examiner's recommendations, independent claim 1 is amended to include the limitations of original dependent claims 2 and 3. Claims 2 and 3 are canceled.

As a result, independent claim 1 (which is actually the same in scope as original claim 3) now recites a rotary valve containing a seal structure including *opposing first and second annular seal cartridge members and a resilient annular seal* such that the cavity formed by opposing first and second annular seal cartridge members provides *an elliptical configuration to deform said resilient annular seal to an elliptical shape* and additionally recites a shaft having *a first longitudinal portion disposed externally of the valve and a second longitudinal portion disposed internally of the valve*. Because claim 1 is the same in scope as original claim 3, which was indicated to be allowable, Applicant submits that

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claim 1 and all claims dependent thereon are now allowable. Applicant therefore requests reconsideration and withdrawal of the rejection.

Claims 14, 15, and 18 stand rejected under 35 U.S.C. §102(b) as anticipated by Scobie et al. (U.S. Patent No. 4,659,064.) Applicant respectfully traverses these rejections.

In accordance with the Examiner's recommendations regarding allowable subject matter, independent claim 14 is amended to include the limitations of original dependent claims 15 and 17.

As a result, amended independent claim 14 (which is actually the same in scope as original claim 17) recites a rotary valve comprising a *shaft having a first longitudinal portion rotationally locked to a disc* and a second longitudinal portion disposed externally of the valve body such that the provided first and second guide structures extend inwardly into the valve body and recites that the *first longitudinal portion of said shaft rotatably extend[s] through one of the first and second guide structures such that the guide structures function to hold said disc in a precisely centered orientation* within said interior of said valve body.

Because claim 14 is the same in scope as original claim 17, which was indicated to be allowable, Applicant submits that claim 14 and all claims dependent thereon are now allowable. Applicant therefore requests reconsideration and withdrawal of the rejections.

### III. 35 U.S.C. §103 REJECTIONS

Applicant respectfully traverses the rejections of claim 5 (as obvious over Hubertson), claims 6, 7, and 10 (as obvious over Hubertson in view of Scobie et al.), claims 11-13 (as obvious over Hubertson in view of Bylsma, U.S. Patent No. 4,181,288), and claims 19-22 as obvious over Hubertson in view of Bylsma. Applicant respectfully requests reconsideration and withdrawal of these rejections.

Applicant submits that the foregoing amendments to claim 1 have rendered the rejections of dependent claims 5, 6, 7, and 10-13 moot, as each of

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these claims now depends from an allowable claim. As such, these rejections should be withdrawn.

In addition, independent claim 19 is amended to incorporate the subject matter from original claims 15 and 17. Applicant submits, therefore, that claim 19 and each of dependent claims 20-22 is allowable for the reasons indicated by the examiner in the Office Action with respect to original claim 17.

Applicant respectfully submits that the amendments and the remarks presented herein place the application in condition for allowance. If necessary to grant an allowance in this case, Applicant grants the Examiner permission to cancel withdrawn claims 23-32 in an Examiner's Amendment.

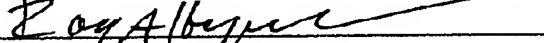
#### **IV. CONCLUSION**

For the reasons stated above, Applicant submits that the specification and claims are in proper form and clearly define patentable subject matter with respect to the prior art. If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP.

Respectfully submitted for,

MARSHALL, GERSTEIN & BORUN LLP

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